

## **REMARKS/ARGUMENTS**

The rejections presented in the Office Action dated September 17, 2007 (hereinafter Office Action) have been considered, and reconsideration of the pending claims and allowance of the application in view of the present response is respectfully requested.

In an effort to facilitate prosecution and without acquiescing to characterizations of the asserted art, Applicant's claimed subject matter, or to the applications of the asserted art or combinations thereof to Applicant's claimed subject matter, Applicant has amended independent Claims 1, 19 and 22 to indicate that an image is captured with only the selected subsystem and stored. These changes merely more explicitly characterize that only one subsystem is used to capture an image as was implicit in the original claim language. Further, paragraph [0024] discusses an image memory; therefore, the changes do not introduce new matter to the application. As Smith teaches that images are captured using the low-resolution imager before and/or after capturing the image with the high-resolution imager, Smith teaches that images are captured with both asserted subsystems in capturing a desired image such that Smith does not teach capturing and storing an image with only the selected subsystem. Without correspondence to each of the claimed limitations, the prior art rejections would be improper. Applicant accordingly requests that the rejections based upon Smith be withdrawn.

Applicant further submits that the asserted modifications of Smith, or the teachings of Denyer, do not overcome the above-discussed deficiencies of Smith's teachings. As discussed above, Smith does not teach capturing and storing an image with only the selected subsystem, and none of the asserted modifications of Smith, the teachings of Official Notice or any teachings in Denyer, have been shown to overcome this absence. Without correspondence to each of the claimed limitations, the § 103(a) rejections would also be improper, and Applicant accordingly requests that they be withdrawn.

With particular respect to the assertion at page five that the microprocessor 52 inherently selects the imager subsystem required to capture an image for different camera processes, such assertion is unsupported and incorrect. Applicant notes that "The fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to

establish the inherency of that result or characteristic. *In re Rijckaert*, 9 F.3d 1531, 1534, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993) (reversed rejection because inherency was based on what would result due to optimization of conditions, not what was necessarily present in the prior art). MPEP § 2112 further states that “To establish inherency, the extrinsic evidence ‘must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.’ *In re Robertson*, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999).” At column 3, line 65 *et seq.*, Smith teaches that the microprocessor also receives user settings from a user input section. Thus, the user may select the subsystem and not the microprocessor. Thus, the requisite evidence to support the assertion of inherency has not been presented, and in contrast, the teachings of Smith indicate that such assertion is incorrect.

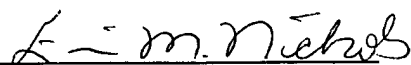
It should be noted that Applicant does not acquiesce to the Examiner’s statements or conclusions concerning what would have been obvious to one of ordinary skill in the art, obvious design choices, common knowledge at the time of Applicant’s invention, officially noticed facts, and the like. Applicant reserves the right to address in detail the Examiner’s characterizations, conclusions, and rejections in future prosecution.

Authorization is given to charge Deposit Account No. 50-3581 (KOLS.075PA) any necessary fees for this filing. If the Examiner believes it necessary or helpful, the undersigned attorney of record invites the Examiner to contact the undersigned attorney to discuss any issues related to this case.

Respectfully submitted,

HOLLINGSWORTH & FUNK, LLC  
8009 34<sup>th</sup> Avenue South, Suite 125  
Minneapolis, MN 55425  
952.854.2700

Date: December 17, 2007

By: 

Erin M. Nichols  
Reg. No. 57,125